

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JASON MOOMJY, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

HQ SUSTAINABLE MARITIME
INDUSTRIES, INC., NORBERT SPORNS,
AND JEAN-PIERRE DALLAIRE, *et al.*,

Defendants.

Case No. 2:11-cv-00726-RSL

**DEFENDANT HQ SUSTAINABLE
MARITIME INDUSTRIES, INC.'S
RESPONSE TO OBJECTIONS OF
MARK PIERCE HANSON**

**NOTE ON MOTION CALENDAR:
MARCH 21, 2013 AT 10:30 AM
ORAL ARGUMENT REQUESTED**

Mark Pierce Hanson has filed an Objection to the settlement of the above-referenced putative class action [Dkt #150] claiming that a “clear case of fraud” exists against Defendant HQ Sustainable Maritime Industries, Inc. (“HQS”) and that, therefore, the amount of settlement is insufficient (hereinafter referred to as “Hanson Objections”). HQS hereby responds. The fraud that Mr. Hanson alleges is statements allegedly made to investors as to the amounts expended to acquire or expand a fry processing facility and value added facilities. Of course, a single objection should not, under any circumstances, be the basis upon which a settlement, negotiated by lead counsel after months of negotiation and with the assistance of a well-respected mediator, should be rejected. *See Stoetznner v. U.S. Steel Corp.*, 897 F.2d 115

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1 (3d Cir. 1990) (noting that 10% objection rate “strongly favors settlement”). Further, based
2 upon Lead Plaintiff’s response to Mr. Hanson’s Objection [Dkt #151], the Hanson Objections
3 appear to have been resolved. HQS nevertheless submits this response to address the
4 substance of Mr. Hanson’s assertions because they are baseless. It does so to the extent
5 Mr. Hanson’s assertions in any manner gave the Court pause and, perhaps more importantly, to
6 highlight that HQS vigorously disputed the claims asserted, which further demonstrates the
7 fairness and reasonableness of the settlement. Simply stated, HQS constructed an operational
8 fry processing facility, obtained a value added facility for the United States market and
9 obtained the land for and began the renovations to construct a value added facility.
10

11 Contrary to the Hanson Objections, HQS acquired and operated a fry breeding facility
12 in China. Mr. Hanson alleges that the fry breeding facility “was never actually constructed nor
13 placed in operation” and that HQS made false or misleading statements regarding the facilities
14 and the need for capital to grow and operate these businesses. (Hanson Objections at p. 1). In
15 fact, in accord with its plans for future operations, HQS acquired, constructed, and operated a
16 fry breeding facility as asserted in the SEC filings and HQS statements cited by Mr. Hanson.
17 Photographs taken in January 2010 show the signage and gated entrance to the facility, both of
18 which reflect an HQS breeding operation. (See Exhibit A (signage); Exhibit B (gated
19 entrance)). Fry breeding ponds shown in Exhibit C were operational, with a planned
20 expansion for research and development around selective breeding. These photographs are
21 consistent with the statements by HQS and cited in the Hanson Objections that the fry breeding
22 facility was built and in operation in 2010, and that planned expansions were necessary and
23 intended upon the acquisition of additional capital.
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1 Additionally, Kevin Fitzsimmons, Ph. D., visited the fry breeding facility in May 2011
 2 in his capacity as an independent member of the HQS Board. His notes reflect that the facility
 3 was operational, that it had expanded since 2010, and that additional outlays might be needed
 4 to keep it operating at its highest capacity. During his visit, Dr. Fitzsimmons spoke with
 5 hatchery managers, contract farmers, feed mill staff, and others regarding the operation of the
 6 fry breeding facility. Dr. Fitzsimmons recommended various changes to the breeding
 7 operations, including expansions and/or changes in construction to increase cost-efficiency and
 8 production at the hatchery.
 9

10 In 2010, HQS took a number of steps to grow its business using value-added
 11 production means in China and America. In the American market, HQS acquired 49% of the
 12 SOJO Foods, LLC operation in Sumner, Washington. (*See* Homepage of Sojo Foods,
 13 www.sojofoods.com, attached hereto as Exhibit D). In China, consistent with the statements
 14 cited by Mr. Hanson, HQS purchased land adjacent to the existing tilapia processing facilities.
 15 Attached photographs reflect billboards showing one of the planned designs for the value-
 16 added Chinese production facilities installed at the leased property location. (*See* Exhibit E).
 17 Additional photographs show existing structures within that leased property where HQS
 18 intended to build. (*See* Exhibit F). Mr. Hanson challenges the funds expended as to the value-
 19 added production facility but ignores that, as with the tilapia facility, the property was owned
 20 by and leased from the military land rather than purchased outright. HQS considered
 21 numerous designs and layouts given plans to add new technology to the facility, including that
 22 shown in Exhibit E.
 23
 24
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 26

1 While the value added projects may not have been completed, this was because HQS
2 was forced to revise its plans. A change in plans is not fraud. HQS's disclosures of its plans
3 for the ongoing development of these facilities are plainly non-actionable forward looking
4 statements that were characterized as such. See 15 U.S.C. § 77z(2)(i)(1) (defining safe-harbor
5 statements).

6
7 DATED this 18th day of March, 2013.

8
9 COZEN O'CONNOR

10 By: /s/ Michael D. Handler
11 Michael D. Handler, WSBA No. 25654

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25 Attorneys for Defendant HQ Sustainable
26 Maritime Industries, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2013, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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4
5 I hereby further certify that on March 18, 2013, I sent via UPS Overnight Mail a paper
6 copy of the foregoing to the following:
7

8 Mark Pierce Hanson
9 600 North Fairbanks Court #2403
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10
11 /s/ Michael D. Handler
12 MICHAEL D. HANDLER
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